Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Redevelopmenf of Spectrum to	)	ET Docket No. 92-9
Encourage Innovation in the Use of	)	
New Telecommunications Technologies	)	

To: The Commission

COMMENTS OF APPLE COMPUTER, INC.

On August 13, 1993, the Federal Communications Commission (the "FCC" or "Commission") released its Third Report and Order and Memorandum Opinion and Order in the above-referenced docket (the "Third R&O").[1] Apple Computer, Inc. ("Apple") hereby submits comments in response to certain of the petitions seeking reconsideration and/or clarification of the Third R&O.

I. THE COMMISSION SHOULD REFUSE TO INCREASE THE NUMBER OF PUBLIC SAFETY STATIONS THAT ARE EXEMPT FROM MANDATORY RELOCATION.

As Apple has previously explained in greater detail, the unique characteristics of nomadic, unlicensed PCS devices (including Data-PCS devices) require that the entire asynchronous unlicensed band must be cleared of all existing microwave stations before the first such device can be deployed — the so-called "last link" problem. The Commission's decision to exempt certain public safety licensees from mandatory relocation will make it more difficult to complete the band clearing process by limiting the relocation options with respect to such licensees.[2]

Apple accepts the Commission's decision to create a limited public safety exemption, but opposes any effort to expand this exemption, as requested by

---

1 FCC 93-351, 58 Red. Reg. 46547 (Sept. 2, 1993).

2 While public safety stations are exempt from mandatory relocation to the 6 GHz band, they may be required to move within the 2 GHz band, including to the 2 GHz government band. See Third R&O at ¶¶ 27, 29.

several of the petitioners.[3] In most respects, the instant petitions should be denied because they merely restate arguments already rejected by the Commission.[4]

To the extent that the petitions challenge the Commission's "majority of services" test,[5] they should be denied because the test: (i) rationally distinguishes true public safety facilities from other facilities which carry more limited or infrequent public safety traffic, (ii) strikes an appropriate balance between the public interest in the rapid deployment of nomadic Data-PCS and the public interest in the protection of public safety communications facilities, (iii) imposes only a limited and reasonable burden on those wishing to take advantage of the public safety exemption, and (iv) applies equally to all public safety services, and, therefore, does not draw an arbitrary or unreasonable distinction among licensees based upon different eligibility standards.[6]

If the Commission were to delete the "majority of services" test in favor of a looser standard, it would dramatically expand the number of grandfathered stations and delay or prevent the introduction of Data-PCS and similar services. This harm would far outweigh any minimal burden associated with making a

---

[3] See Petition for Clarification and/or Reconsideration by the American Association of State Highway and Transportation Officials Special Committee on Communications (filed Sept. 20, 1993) ("AASHTO Petition"); Petition of the Forestry-Conservation Communications Association for Partial Reconsideration (filed Oct. 4, 1993) ("FCCA Petition"); Petition for Clarification or Reconsideration from the Public Safety Communications Council (filed Sept. 29, 1993) ("PSCC Petition") ; Petition for Partial Reconsideration of Third Report and Order of the Public Safety Microwave Committee (filed Oct. 4, 1993) ("PSMC Petition"); see also Statement of the Association of Public-Safety Communications Officials-International, Inc. in Support of Petitions for Partial Reconsideration (filed Oct. 4, 1993) ("APCO Statement").

[4] For example, several petitioners argue that highway maintenance, forestry-conservation, and all other public safety radio services should be exempt from mandatory relocation, e.g. AASHTO Petition, FCCA Petition, PSCC Petition, and one petitioner argues that the Commission's decision in the Third R&O is inconsistent with congressional intent, the Commission's First Report and Order in this docket, and its long-standing definition of "public safety," see PSMC Petition; see also APCO Statement. These arguments were raised in previous petitions for reconsideration in this docket and were rejected by the Commission in the Third R&O. See Third R&O at ¶¶ 48, 50-51, and n.71.

[5] The Third R&O limits the public safety exemption to eligible facilities on which the majority of communications are used for police, fire, or emergency medical services operations involving safety of life and property. Third R&O at ¶ 52.

[6] While facilities licenses under the eligibility requirements of Sections 90.19, 90.21, 90.27, and Subpart C of Part 90 arguably do not have to make a "majority of communications" showing, they remain subject to the "majority of communications" requirement. See Third R&O at ¶ 52, amended rule 94.59(f).

"majority of services" showing or applying the Commission's "safety of life and property" standard.

Moreover, the petitioners are amply protected under the procedure adopted by the Commission. The Third R&O assures all incumbent licensees that they will be provided comparable facilities permitting equivalent communications services at no cost to them. The added layer of protection afforded by the public safety exemption responds to the unique needs certain "core" public safety licensees, and is unnecessary to ensure the continued reliable operation of state and local government systems more generally.

Finally, Apple notes that the Commission can respond to the concerns of the petitioners by encouraging (or at a minimum permitting) in-band retuning of all licensees, including non-public safety licensees.[7] By taking this step, the Commission would give the petitioners the desired benefit — the ability to remain in the 2 GHz band wherever possible — without undermining the development of Data-PCS.

II. THE COMMISSION SHOULD PERMIT RETUNING TO THE 2 GHZ GOVERNMENT BAND WHEREVER POSSIBLE.

The Association of American Railroads ("AAR") asked the Commission to take appropriate steps to make federal spectrum adjacent to the 2 GHz band available as a relocation site for displaced 2 GHz licensees, by urging the National Telecommunications and Information Agency ("NTIA") to reallocate 50 MHz in the 1710-1850 MHz government band from the federal government to the private sector pursuant to the requirements of the Omnibus Budget Reconciliation Act of 1993.[8]

Apple agrees that the 2 GHz band (both government spectrum and non-government spectrum) should be used to the maximum possible to accommodate re-tuned microwave stations. As Apple has stated previously, the costs and delays associated with re-tuning a station within the 2 GHz band are significantly lower than the costs and delays associated with relocating a station to the 6 GHz band. Apple accordingly supports AAR's general request

---

[7] See Apple Petition for Reconsideration at 3-10 (filed Sept. 13, 1993) ("Apple Petition").
[8] AAR Petition for Reconsideration and Partial Clarification at 2-4 (filed Oct. 4, 1993) (the "AAR Petition").

concerning use of the government band, and supports its specific request concerning reallocation of 50 MHz of this band if, in Commission's view, such a reallocation would make this spectrum more easily or more quickly available to accommodate microwave stations currently operating in the emerging technologies bands.[9]

III. THE COMMISSION SHOULD CLARIFY THAT LICENSEES RELOCATED FROM THE UNLICENSED BAND WILL BE ELIGIBLE FOR TAX CERTIFICATES.

The Unlicensed PCS Ad Hoc Committee for 2 GHz Microwave Transition and Management ("UTAM"), AAR, and the Utilities Telecommunications Council ("UTC") asked the Commission to clarify that tax certificates will be available for licensees relocated from the 2 GHz unlicensed band.[10] These requests mirror a similar request made by Apple in its Petition for Reconsideration,[11] and for the reasons stated in that Petition, Apple supports these requests.

Apple, however, disagrees with UTC's statement that the Commission should deny certificates only when: (i) the FCC is forced to modify the incumbent's license over the incumbent's objection, and (ii) the FCC finds that the incumbent's objections were patently without merit.[12] The Commission's policy of encouraging voluntary relocation agreements would be best served if the Commission awards tax certificates to incumbent licensees relocated by unlicensed PCS providers only if they enter into relocation agreements during the one-year mandatory relocation period.

If the Commission decides to award certificates more generously, as recommended by UTC, it should deny certificates to any licensee who refuses to engage in good faith negotiations, unreasonably rejects comparable facilities, or otherwise interferes with the Commission's goal of promptly clearing the unlicensed band. UTC's "patently without merit" standard is too rigid and is

---

[9] Apple notes that AAR's arguments in support of AAR's request also support Apple's request that the Commission permit in-band retuning to the maximum extent possible. See Apple Petition at 3-10.

[10] UTAM Petition for Clarification and/or Reconsideration (filed Oct. 4, 1993); AAR Petition at 5-8; UTC Petition for Clarification and/or Reconsideration of the Third Report and Order at 5-7 (filed Oct. 4, 1993) ("UTC Petition").

[11] Apple Petition at 11-12.

[12] UTC Petition at 7.

inconsistent with the purpose for which the Commission decided to grant tax certificates — to encourage voluntary relocation agreements, not merely to discourage bad faith actions by incumbent licensees.[13]

Apple also disagrees with AAR's apparent belief that microwave licensees may be granted tax certificates for cash payments in excess of actual relocation costs.[14] The Commission should make clear that a PCS provider will *never* be expected to pay an incumbent licensee any amount in excess of actual relocation costs, that tax certificates will not be issued to enable a licensee to "cash out" existing facilities on a tax-deferred basis, and that the Commission expects incumbent licensees to agree to relocation at the earliest possible date without demanding a premium for their cooperation.

IV. THE COMMISSION SHOULD CLARIFY CERTAIN MATTERS WITH RESPECT TO THE TIMING OF THE TRANSITION PERIOD.

AAR and UTC asked the Commission to clarify what constitutes a "triggering event" that will start the two-year voluntary negotiation period applicable to licensed PCS.[15] Apple takes no position on these requests.

If the Commission makes any clarifications concerning the relocation negotiation periods, however, it should also clarify that the negotiation period for a given station will be based upon the purpose for which the station is being relocated, rather than upon the frequency band within which the station is currently operating.

Thus, if providers of unlicensed PCS products need to relocate a station due to a potential adjacent channel interference problem, the one-year mandatory negotiation period applicable to unlicensed services, rather than the two-plus-one year periods applicable to licensed services, should govern the relocation. While this is clearly what the Commission contemplates,[16] Apple respectfully requests that the Commission clarify its relocation rules to avoid any future confusion.

---

[13] See Third R&O at ¶ 42.

[14] AAR Petition at 7-8 (requesting clarification of how tax certificates will operate where a cash payment from a PCS provider to an incumbent licensee exceeds the amount spent on relocation).

[15] AAR Petition at 4-5; UTC Petition at 2-5.

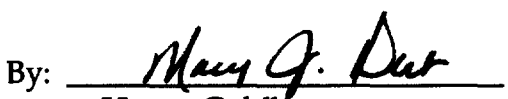
[16] Second Report and Order, GEN Docket No. 90-314, FCC 93-451, at n.108 (released Oct. 22, 1993).

V. CONCLUSION.

Apple requests that the Commission grant or deny the petitions for reconsideration in the manner, and for the reasons, discussed above.

Respectfully submitted,

APPLE COMPUTER, INC.

By: 
Henry Goldberg
Mary J. Dent

GOLDBERG, GODLES, WIENER & WRIGHT
1229 19th Street, N.W.
Washington, D.C. 20036
(202) 429-4900

Its Attorneys

Of Counsel:

James M. Burger
Chief Counsel - Government
APPLE COMPUTER, INC.
1550 M Street, N.W.
Suite 1000
Washington, D.C. 20005

November 8, 1993

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Comments of Apple Computer, Inc. was sent by first-class mail, postage prepaid, this 8th day of November, 1993, to each of the following:

Larry Miller, Chairman
Public Safety Communications Council
American Association of State Highway and Transportation Officials
444 North Capitol Street, N.W.
Suite 249
Washington, D.C. 20001

Francis B. Francois, Executive Director
American Association of State Highway and Transportation Officials
444 North Capitol Street, N.W.
Suite 249
Washington, D.C. 20001

Lon C. Levin
Vice President and Regulatory Counsel
AMSC Subsidiary Corporation
10802 Parkridge Boulevard
Reston, Virginia 22091

Thomas J. Keller, Esq.
Michael S. Wroblewski, Esq.
Verner, Liipfert, Bernhard, McPherson & Hand
901 15th Street, N.W., Suite 700
Washington, D.C. 20005
Counsel for Association of American Railroads

Jeffrey Goff, President
Missouri Department of Conservation
P.O. Box 280
Jefferson City, Missouri 65102

Jeffrey L. Sheldon, Esq.
Sean A. Stokes, Esq.
Utilities Telecommunications Council
1140 Connecticut Avenue, N.W.
Suite 1140
Washington, D.C. 20036

John D. Lane, Esq.
Robert M. Gurss, Esq.
Wilkes, Artis, Hedrick & Lane
1666 K Street, N.W.
Washington, D.C. 20006

R. Michael Senkowski, Esq.
Robert J. Butler, Esq.
Lauren A. Carbaugh, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Counsel for UTAM

Bruce D. Jacobs, Esq.
Glenn S. Richards, Esq.
Fisher, Wayland, Cooper & Leader
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20036
Counsel for AMSC Subsidiary Corp.

Richard H. Strodel, Esq.
Haley, Bader & Potts
4350 N. Fairfax Drive
Suite 900
Arlington, Virginia 22203-1633
Counsel for Western Telecommunication

Christopher R. Hardy, Esq.
Comsearch, Inc.
11720 Sunrise Valley Drive
Reston, VA 22091

Leonard R. Raish, Esq.
Fletcher, Heald & Hildreth
1225 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036-2679
Counsel for Harris Corporation Farin Division

Chairman James H. Quello*
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Commissioner Ervin S. Duggan*
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Commissioner Andrew C. Barrett*
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Kathleen B. Levitz*
Acting Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

H. Stuart F. Feldstein, Esq.
Richard Rubin, Esq.
Associated PCN Company
c/o Fleischman and Walsh
1400 16th Street, N.W.
Washington, D.C. 20036

Randall D. Fisher, Esq.
Daniel V. Liberatore, P.E.
Adelphia Communications Corp.
5 West Third Street
Coudersport, PA 16915

Renee Licht*
Office of General Counsel
Federal Communications Commission
1919 M Street, N.W., Room 614
Washington, D.C. 20554

Mr. Jimmy K. Omura
Chairman
Digital Spread Spectrum Technologies, Inc.
110 South Wolfe Road
Sunnyvale, California 94086

Mr. Harold C. Davis
Chief Technical Officer
Advanced MobileComm Technologies, Inc.
82 Devonshire Street, R25D
Boston, Massachusetts 02109

Francine J. Berry, Esq.
David P. Condit, Esq.
Seth S. Gross, Esq.
Room 3244J1
295 North Maple Avenue
Basking Ridge, New Jersey 07920

Mr. Robert Ross Gray
American TeleZone
13103 N. Moss Creek
Cypress, Texas 77429

JoAnne G. Bloom, Esq.
Robert Reiland, Esq.
Ameritech
Suite 3900
30 South Wacker Drive
Chicago, Illinois 60606

Winston E. Hinsworth
Tel / Logic, Inc.
51 Shore Drive
Plandome, New York 11030

Thomas E. Martinson
PCN America, Inc.
153 East 53rd Street
Suite 2500
New York, New York 10022

Terrence P. McGarty
The Telemarc Group Inc., and Telmarc Telecommunications, Co.
265 Franklin Street
Boston, Massachusetts 02110

Charles F. Wright
Centel Corporation
8725 Higgins Street
Chicago, Illinois 60631

Dr. Thomas P. Stanley*
Chief Engineer
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, D.C. 20554

David R. Siddall*
Office of Engineering and Technology
Federal Communications Commission
2025 M Street, N.W., Room 7102-A
Washington, D.C. 20554

Rodney Small*
Office of Engineering & Technology
Federal Communications Commission
2025 M Street, N.W., Room 7332
Washington, D.C. 20554

Thomas Derenge*
Office of Engineering & Technology
Federal Communications Commission
2025 M Street, N.W., Room 7332
Washington, D.C. 20554

Rich Larochelle
National Rural Electric Coop. Association
1800 Massachusetts Ave.
Washington, D.C. 20036

Phillip L. Spector, Esq.
Susan E. Ryan, Esq.
Paul, Weiss, Rifkin, Wharton & Garrison
1615 L Street, N.W., Suite 1300
Washington, D.C. 20036
Counsel for Pagemart, Inc.

Carl W. Northrop, Esq.
Bryan Cave
700 13th Street, N.W.
Washington, D.C. 20005-3960
Counsel for Pactel Paging

George Y. Wheeler, Esq.
Koteen and Naftalin
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
Counsel for American Paging

Laurie A. Gray

* By Hand